IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JOHN DOE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. ____________________**
	)	
MARYMOUNT UNIVERSITY,	)	
LINDA McMURDOCK,	)	
and JANE ROE,	)	
	)	
Defendants.	)	
	)	

COMPLAINT

Plaintiff John Doe,[1] by and through his undersigned attorneys, files this complaint against Defendants Marymount University and Linda McMurdock for gender-based discrimination in violation of Title IX (20 U.S.C. § 1681-1688), and for common law breach of contract, breach of the covenant of good faith and fair dealing, breach of duties owed under the law of associations, and for negligence. He also files this complaint against Defendant Jane Roe for defamation.

NATURE OF THE CASE

1. Undeniably, private universities like Marymount have the authority (and, under Title IX, the obligation) to protect their students from sexual assaults committed by other students. Just as certainly, private universities have considerable discretion to chose for themselves appropriate sexual misconduct procedures specifying how they will investigate and

[1] "John Doe" is a pseudonym being used instead of the Plaintiff's real name due to the nature of the allegations in this lawsuit. Mr. Doe seeks to protect his privacy as well as that of his accuser, who is identified as "Jane Roe."

adjudicate allegations of sexual assault by their students. Mr. Doe's claims in this case challenge neither of these well-established propositions.

2. What Mr. Doe does challenge is the proposition that a private university—in conducting sexual misconduct investigations and adjudications—has *carte blanche* to discard its own policies, or to act arbitrarily, capriciously, maliciously, discriminatorily, or otherwise in bad faith. As set out below, each of these terms aptly describe the outrageous process through which Marymount investigated and found Mr. Doe, a male, responsible for allegations of sexual assault made against him by a female student. **Mr. Doe was, for example, never even allowed to meet with, or even speak to, either the person who decided his guilt or who handled his appeal—notwithstanding the overwhelming importance of credibility in adjudicating allegations like these**. Under Title IX and Virginia's common law, such a process cannot stand.

3. Mr. Doe was introduced to his accuser, Jane Roe, by a friend, who gave Ms. Roe his telephone number and who told Mr. Doe she was interested in him.

4. Ms. Roe contacted Mr. Doe, and after a bit of flirtatious discussion, they arranged to meet at Mr. Doe's dorm room.

5. There, they began to make out and fondle one another on Mr. Doe's bed—but at no point did they have sex or even touch each other's genitals. After about 30 minutes of making out and fondling, Ms. Roe decided to leave.

6. **About an hour after she left Mr. Doe's room, when Mr. Doe texted her about her plans, Ms. Roe replied "I'm eating pizza haha." And Ms. Roe's roommate, who saw Ms. Roe later in the night of the alleged assault, described her as "happy" and "giddy," showing off hickeys she had received from Mr. Doe and describing how Mr. Doe was "good with his tongue."**

7. Ms. Roe didn't respond to Mr. Doe's text messages in the following days, and he realized that she was no longer interested in spending time with him. So they stopped communicating.

8. Nearly ten months later, Mr. Doe was contacted by Marymount's Title IX Coordinator, who informed him that Ms. Roe had claimed that he sexually assaulted her.

9. Ms. Roe's allegations were not only demonstrably false but implausible in their details: she alleged that Mr. Doe held her down and tried to remove her clothes; that Mr. Doe performed oral sex on her without her consent and that she "kneed him in the face"; that, after she then got up off the bed, Mr. Doe put his fist up her vagina *while she was standing up* (something that is simply impossible and, even if possible, could not have been done without serious, verifiable injury); and that Mr. Doe locked the door from the inside to trap her in the room (despite the fact that the lock is a simple push-button mechanism that unlocks when the knob is twisted). And all of this allegedly happened in a crowded, busy dorm on a Friday night, yet there was no evidence that any sounds of distress were ever heard—no yelling, no screaming, nothing.

10. Marymount's investigators ignored the implausibility of Ms. Roe's allegations and failed to pursue evidence that could clearly falsify them—such as any medical records or other evidence that Ms. Roe kneed Mr. Doe in the face, or that Mr. Doe put his entire fist in Ms. Roe's vagina while she was standing.

11. For Mr. Doe's part, he was prevented from aiding in his own defense by the University's imposition of a no-contact order barring Mr. Doe not only from contacting the complainant—as such orders commonly do—but barring Mr. Doe or his attorney/advisor from

speaking to *any other students* about the allegations, including students who may have evidence necessary to his defense.

12. Compounding these fundamental flaws in the investigative process, the investigators permitted their final investigative report to include irrelevant and highly prejudicial comments, including Mr. Doe's response to a puzzling interview question asking him whether he knew anyone who had been raped before—a fact completely irrelevant to the allegations at issue.

13. The taint caused by the failure to obtain evidence and by the inclusion of irrelevant and prejudicial statements in the investigative report was made all the worse by the fact that the investigative report would serve as the *sole* basis for the adjudicator's decision—because, incredibly, the adjudicator tasked with ultimately deciding Mr. Doe's guilt or innocence refused to meet with Mr. Doe face-to-face, claiming to have the discretion to decide the matter on the cold (and deeply flawed) documentary record alone.

14. And perhaps most inexplicably, the adjudicator refused to consider any evidence in the record outside of Ms. Roe's and Mr. Doe's statements about what happened in Mr. Doe's room. The adjudicator refused, for example, to consider Ms. Roe's text to Mr. Doe, sent just an hour after the alleged assault, saying "I'm eating pizza haha." The adjudicator refused to consider Ms. Roe's roommate's testimony that Ms. Roe was "happy" and "giddy" in the hours after the alleged assault, and that Ms. Roe bragged about making out with Mr. Doe.

15. Unsurprisingly, this outrageous process resulted in the adjudicator's finding Mr. Doe responsible for sexual misconduct and imposing a two-year suspension.

16. This fundamentally flawed investigation and adjudication did not occur in a vacuum; rather, it occurred in the heat of a nationwide crusade by the U.S. Department of Education's Office for Civil Rights ("OCR") against sexual assault on college campuses, a

crusade in which, as of now, OCR has launched investigations of more than 300 colleges and universities. The issue of sexual assault on college campuses has also received substantial attention in the national media.

17. This pressure caused Marymount to go out of its way to ensure that Mr. Doe, a male student, would be found responsible for sexual assault of Ms. Roe, a female student. This conclusion is borne out as well by the numerous statements made by Marymount's Title IX officials, and the fact that Marymount appointed an investigator, in a subsequent case against another male Marymount student, who previously served as an OCR attorney and who had said in an interview that "most people who complain about sexual assault are telling the truth."

18. In conducting its investigation and adjudication the way it did, Marymount treated him differently than it would have treated a female student. Moreover, Marymount violated its own contractual and common law obligations—including the obligations embodied in its own sexual misconduct policies and procedures. For all of these violations of law, Mr. Doe now seeks redress.

JURISDICTION AND VENUE

19. The Court has federal question and supplemental jurisdiction pursuant to 28 U.S.C. § 1331 and under 28 U.S.C. § 1367. Mr. Doe raises a federal law claim under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688. And the state law claims are so closely related to the federal law claim as to form the same case or controversy under Article III of the United States Constitution. The Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332, because Mr. Doe is a subject of the United Kingdom and Marymount University, Linda McMurdock, and Jane Roe are all citizens of the Commonwealth of Virginia, and the amount in controversy exceeds $75,000.

20. Venue properly lies in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Mr. Doe's claims occurred within this judicial district.

PARTIES

21. Plaintiff John Doe is, and at all times relevant to this Complaint has been, a subject of the United Kingdom. Between August 2014 and August 2016, Mr. Doe was an undergraduate student at Marymount University. On September 8, 2015, Mr. Doe was notified that he was being investigated by Marymount University for violating its sexual misconduct policy. On June 22, 2016, he was found responsible for sexual misconduct and, on July 11, he was suspended from the University for two academic years. Unless overturned, the finding and sanction will remain a part of Mr. Doe's educational records, which may be released to other educational institutions or employers to which Mr. Doe applies. This will substantially limit his ability to pursue further educational opportunities or secure future employment.

22. Defendant Marymount University ("Marymount" or "the University") is a private university formed under the laws of the Commonwealth of Virginia and located in Arlington County, Virginia.

23. Defendant Linda McMurdock is, or at all relevant times was, Marymount's Title IX Coordinator, responsible for overseeing Marymount's process for investigating and adjudicating allegations of sexual misconduct, including advising the University's advisors and adjudicators with regards to their authority and responsibilities under the University's sexual misconduct policies and procedures, Title IX, and applicable Title IX regulations and guidance. Upon information and belief, Defendant McMurdock is a citizen of the Commonwealth of Virginia.

24. Upon information and belief, Defendant Jane Roe is, or at all relevant times was, a citizen of the Commonwealth of Virginia. She is scheduled to graduate from Marymount University in 2017.

STATEMENT OF FACTS

25. Mr. Doe enrolled as an undergraduate student at Marymount University in August 2014. Beginning at that time, and continuing through the events giving rise to this action, Mr. Doe paid tuition to attend the University.

UNIVERSITY POLICIES AND PROCEDURES

26. At the outset of the 2015-2016 academic year, the University adopted and made available to its students its Sexual Harassment and Interpersonal Misconduct Policy (hereafter "the Policy").

27. The Policy describes Marymount's standards for what constitutes sexual misconduct and specifies the procedures that Marymount must use to adjudicate allegations of sexual misconduct.

28. Among other prohibited conduct, the Policy prohibits "Non-Consensual Sexual Intercourse," which the Policy defines as "Having or attempting to have sexual intercourse with another individual: by force or threat of force; without effective consent; or where that individual is incapacitated."

29. The Policy defines "consent" as "clear permission . . . demonstrated through mutually understandable words and/or actions." While thus providing that consent may be inferred from conduct, the Policy states, "non-verbal consent is more ambiguous than explicitly stating one's wants and limitations."

30. The Policy provides that, following the filing of a complaint of sexual misconduct, the University will conduct an initial "Title IX assessment" to determine, among other things, whether "disciplinary action [against an accused student] may be appropriate."

31. The Policy also provides that, after a complaint of sexual misconduct has been made, the University may take "interim measures" pending the outcome of the Title IX assessment and any subsequent investigation and adjudication, including the imposition of a "no-contact directive." The Policy provides that such interim measures "may be applied to the Complainant and/or the Respondent to the extent reasonably available and warranted by the circumstances."

32. Under the Policy, if the University concludes, after the initial Title IX assessment, that disciplinary action may be appropriate, the University will "initiate an investigation," to be conducted by an "investigation team" designated by the University. The Policy further provides that the "University will typically use a team of two investigators," (referred to herein and in the Policy as the "investigative team") and requires that "any investigator chosen to conduct the investigation must be impartial and free of actual conflict of interest."

33. The Policy provides that the "investigative team will coordinate the gathering of information from the Complainant, the Respondent and any other individuals who may have information relevant to the determination."

34. The Policy further provides that the "investigative team will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate."

35. The Policy further provides that, over the course of the investigation, "[t]he Complainant and the Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information."

36. The Policy provides that this "investigation is designed to provide a fair and reliable gathering of facts," that it "will be thorough, impartial, and fair," and that "all individuals [involved] will be treated with appropriate sensitivity and respect."

37. The Policy provides that "[i]n general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence during an investigation," and that "[a]ny prior sexual history of the Complainant with other individuals [*i.e.* apart from with the Respondent] is typically not relevant and will not be permitted." The Policy, however, contains no such explicit prohibition on the admission of a *Respondent's* prior sexual history—including on the admission of a respondent's prior sexual history with persons other than a complainant.

38. The Policy provides that "the University, through the investigative team, may choose to consider" information about a Respondent's prior sexual history "where there is evidence of a pattern or conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility." The Policy, however, requires the "investigative team, in consultation with the Title IX Coordinator," to make a determination that the evidence is relevant based on a determination that: (1) "the previous incident was substantially similar to the present allegation; (2) the information indicates a pattern of behavior and substantial conformity with that pattern by the Respondent; or (3) the Respondent was subject to a previous credible allegation and/or previously found responsible for a policy violation." The Policy also prohibits the use of such pattern evidence if it is hearsay.

39. The Policy provides that the University "will seek to complete the investigation with 20 (twenty) business days of receiving the complaint, but this time frame may be extended depending on the complexity of the circumstances of each case." OCR's April 4, 2011, "Dear Colleague" letter requires schools to "specify the time frame within which . . . the school will conduct a full investigation of the complaint," noting that, "[b]ased on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint."

40. The Policy provides that, upon the conclusion of the investigation, the "investigative team will prepare a written report that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts."

41. In preparing the investigative report, the Policy requires the investigative team to "review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. In general, the investigative team may redact information that is irrelevant, more prejudicial than probative, or immaterial. The investigative team may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty."

42. The Policy provides that after a draft investigative report is written, but "[b]efore the report is finalized, the Complainant and Respondent will be given the opportunity to review their own statement and as permitted by FERPA [the Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g], a summary of the other information collected during the investigation, including the statements of the other party and any witnesses," and to "submit any additional comment or evidence to the investigative team within five (5) business days."

43. The Policy provides that after the expiration of the period for submitting additional evidence, "the investigative team will make a finding as to whether there is sufficient information alleged to suggest that a policy violation may have occurred."

44. Under the Policy, "[i]f the investigative team determines that there is insufficient information alleged to suggest that a policy violation may have occurred . . . [t]he complaint will have the opportunity to seek review by the Title IX Team by submitting a written request for review." Should a complainant seek such a review, the Title IX Team "may agree with the finding of the investigative team, reverse the finding and refer the case for judicial action, or request that additional investigative steps be taken." In other words, if the investigative team concludes that the complainant's allegations lack merit and that the investigation should proceed no further, the process does not end there. The complainant is then given a second bite at the apple—because the Title IX team can review that decision *de novo*, and refer the case for an adjudication merely because they disagree with the investigative team's conclusions.

45. Accused students, however, get no such second bite at the apple. The Policy provides that "[i]f the investigative team determines that there *is* sufficient information alleged to suggest that a policy violation may have occurred, then the Title IX Coordinator or designee will issue a Notice of Charge to the Complainant and the Respondent and refer the report for judicial action by the Adjudicator." (emphasis added) In other words, if the investigative team believes the allegations do have merit, they are simply sent to the Adjudicator. No second team reviews that decision.

46. Upon information and belief, the University provided this additional opportunity for complainants in order to favor female students, as the overwhelming majority of sexual misconduct complaints brought by students at the University are brought by female students.

47. Upon information and belief, even if the University did not provide this second bite at the apple in order to intentionally favor female students, Defendants know that, as a practical matter, such a policy does overwhelmingly favor female students and have done nothing to change it.

48. Under the Policy, "the Adjudicator will make a finding, by a preponderance of the evidence, as to whether the Respondent is responsible for conduct in violation of [the Policy]."

49. The Policy further provides that "[i]n reaching a determination of responsibility, the Adjudicator ***will*** consult with the Complainant, the Respondent, the Title IX Coordinator, and other affected parties, as appropriate to ensure a full assessment of the facts. Each party may also submit a written impact statement to the Adjudicator for consideration." (emphasis added)

50. Under the Policy, "[i]f the Respondent is found responsible . . . [t]he Adjudicator is responsible for determining the appropriate sanction."

51. The Policy provides that "[e]ither party may appeal" the Adjudicator's decision to the "appropriate Appellate Authority," which, for allegations against a student for sexual misconduct is "typically the Provost and Vice President for Academic Affairs or the Vice President for Development."

52. Under the Policy, however, "dissatisfaction with the outcome of the investigation is not grounds for appeal." Rather, a party may appeal on only two "limited grounds": (1) "new information that could affect the finding of the Adjudicator and that was not reasonably unavailable [*sic*] through the exercise of due diligence at the time of the investigation;" and (2) material deviation(s) from written procedures that resulted in an unfair outcome."

53. The Policy provides that "[i]n any request for appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have

been decided reasonably and appropriately. The appeal is not a new review of the underlying matter. The appellate authority shall consider the merits of an appeal only on the basis of the two grounds for appeal."

54. Except to the extent an appeal is based on the first ground for appeal—new information—the Policy does not permit the Appellate Authority to meet face-to-face with the accused student, but rather provides that review of an investigation will be limited to the written investigation Report and all supporting documents."

55. Under the Policy, "Upon receipt of the appeal, the Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within three (3) business days from receipt of the appeal."

56. Under the Policy, the "Appellate Authority can affirm the findings, alter the findings, and/or alter the sanctions." The Appellate Authority can also "ask that a new investigation and/or adjudication occur," in the event the Appellate Authority's decision is "based on procedures not having been followed in a material manner."

57. The decision of the Appellate Authority is final and unreviewable.

58. The Policy states that "Marymount will make every effort to successfully resolve all reports within 60 days." Resolving disputes within 60 days is in accord with OCR's April 4, 2011, "Dear Colleague" letter, which requires schools to "specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable." The letter further provides that, "[b]ased on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint."

THE INCIDENT

59. In or around early November 2014, Mr. Doe's friend gave Ms. Roe Mr. Doe's telephone number and told Mr. Doe that she was interested in meeting him.

60. Ms. Roe contacted Mr. Doe and they began communicating flirtatiously by text message.

61. On November 8, 2014, Mr. Doe and Ms. Roe arranged by text message for Ms. Roe to visit Mr. Doe at his dorm room that evening.

62. Ms. Roe arrived at Mr. Doe's room around 6:06 p.m., as shown by her text message to him at that time stating "Here :)".

63. In Mr. Doe's dorm room, Ms. Roe and Mr. Doe talked for about 20 minutes with Mr. Doe's roommate present. During this time, Ms. Roe and Mr. Doe were seated on Mr. Doe's bed.

64. After about 20 minutes, Mr. Doe's roommate left.

65. Shortly thereafter, Mr. Doe and Ms. Roe began to make out. As they lay on Mr. Doe's bed, Ms. Roe and Mr. Doe began fondling each other. But neither Ms. Roe nor Mr. Doe touched the other's genitals.

66. After about half an hour, Ms. Roe got up off the bed and said she wanted to see her friends.

67. Mr. Doe stood up and leaned against the door, in a friendly, playful effort to persuade Ms. Roe not to leave. He did not forcefully restrain her from leaving.

68. Ms. Roe kissed Mr. Doe on the cheek and repeated that she needed to leave to see her friends.

69. Mr. Doe then stood aside, and Ms. Roe left.

70. About an hour later that evening, at 8:10 p.m., Mr. Doe texted Ms. Roe telling her that he and his friends would not be hanging out that night and asking her what she was up to. Ms. Roe responded at 8:23 p.m. stating "Y'all aren't going out???" She sent a text message to Mr. Doe less than a minute later stating "I'm eating pizza haha."

71. Over the next few days, Mr. Doe contacted Ms. Roe by text message, seeking to meet again. Ms. Roe was slow to respond and did not appear to Mr. Doe to be interested in meeting up again.

72. On November 15, Mr. Doe sent Ms. Roe a text message to find out whether something was wrong, stating "So I don't mean to be weirdo but I wanna ask what's up it's bothering me." Ms. Roe responded six days later, on November 21, 2014, stating "Hey, so I don't know what you remember about when I was in your room the other night, but you really scared me when you wouldn't take no for an answer. I think you're a really nice guy, I really really do, but you got really pushy and I just wanted to let you know.. [*sic*] I hope you have an amazing weekend!!"

73. Mr. Doe responded "Ok I'm sorry I frightened you, you have a good one too," to which Ms. Roe replied "Thank you!!"

74. Mr. Doe and Ms. Roe did not communicate again.

75. When Ms. Roe returned to her dormitory on November 8, 2014, she was initially "happy" and "giddy," according to her roommate L.J., who was later interviewed by the investigators. She showed off the hickeys that Mr. Doe had given her and said that Mr. Doe was "good with his tongue."

76. Ms. Roe had previously told L.J., shortly before meeting Mr. Doe that night, that she wanted to "climb [Mr. Doe] like a fucking tree" and wanted him to "throw [her] against a wall."

77. When no one paid much attention to what Ms. Roe was saying upon her return from Mr. Doe's room and as she started to drink more, her mood began to change.

78. Ms. Roe eventually began to say that Mr. Doe had been "aggressive" with her and that she "didn't ask for it."

79. On or about that same night, Ms. Roe told another Marymount student, Z.M., that Mr. Doe had physically and sexually assaulted her.

TEN MONTHS LATER, MR. DOE IS NOTIFIED OF MS. ROE'S ALLEGATIONS THAT HE SEXUALLY ASSAULTED HER.

80. Some ten months later, on September 8, 2015, the University's Title IX Coordinator, Defendant Linda McMurdock, notified Mr. Doe—in a face-to-face meeting—that Ms. Roe had alleged that Mr. Doe sexually assaulted her. Defendant McMurdock told Mr. Doe that the date of the alleged assault was November 25, 2014.

81. The same date, on September 8, 2015, Defendant McMurdock sent Mr. Doe a letter notifying him that the University was imposing a "No-Contact Order as an Interim Measure . . . between [Mr. Doe] and [Ms.] Roe."

82. In addition to prohibiting Mr. Doe from "mak[ing] [any] contact, direct or indirect with [Ms. Roe]," the No-Contact Order prohibited Mr. Doe from engaging in any "discussion of th[e] order or the alleged acts that lead to its issuance with other Marymount University students or employees with the exception of support persons identified as Confidential Resources per the University Sexual Harassment and Interpersonal Misconduct Policy."

83. The No-Contact Order did not provide an exception allowing Mr. Doe—even indirectly through an advisor or attorney—to contact University students who might have information about the events surrounding Ms. Roe's allegations for the purpose of preparing a defense.

84. Mr. Doe was therefore prohibited by the No-Contact Order from contacting—even indirectly through an advisor or attorney—other University students who might have information necessary or helpful to Mr. Doe's defense.

85. Two days later, on September 10, 2015, Defendant McMurdock sent Mr. Doe a letter stating that the "University [was] investigating a complaint in which [he] is alleged to have violated the University's Sexual Harassment and Interpersonal Misconduct Policy."

86. The September 10, 2015, letter did not provide a specific date on which Mr. Doe was alleged to have sexually assaulted Ms. Roe, nor did it provide any of the details of the alleged assault—apart from stating that it had been "allege[d] that in November 2014, [Mr. Doe] engaged in forcible sexual intercourse without [Ms. Roe's] consent, and as a result of which she feels unsafe in [the University] community."

87. Only one month later, on October 7, 2015, did Marymount inform Mr. Doe that the specific date of the alleged assault was November 8, 2014—weeks before the date that Defendant McMurdock provided Mr. Doe during their initial meeting.

88. On September 11, 2015, Mr. Doe's father informed the University's Deputy Title IX Coordinator, Aline Orfali, that Mr. Doe had engaged an attorney to serve as his advisor. Ms. Orfali cautioned Mr. Doe's father that hiring an attorney to serve as his advisor "may escalate things."

THE INVESTIGATION

89. The University began an investigation into Ms. Roe's allegations against Mr. Doe. It assigned two people to the investigative team, Dr. Bernadette Costello and Mr. Paul Easton.

90. Upon information and belief, Defendant McMurdock made the decision to appoint Dr. Costello and Mr. Easton to the investigative team.

91. On September 21, 2016, the investigators interviewed Mr. Doe.

92. During that meeting, after Dr. Costello told Mr. Doe that her questioning was complete, Mr. Doe's advisor asked for a short break so that he could speak privately with Mr. Doe before the meeting officially ended.

93. Dr. Costello answered that because Mr. Doe's advisor was not present in his capacity as an attorney, she would not allow them to speak privately before the meeting ended.

94. After refusing a second request and finally being asked a third time, Dr. Costello said that she would only permit them to meet privately for "two minutes."

95. Dr. Costello and Mr. Easton then left the room, and Dr. Costello knocked on the door fewer than two minutes later, insisting that time was up.

96. Thereafter, the investigators separately interviewed Ms. Roe.

97. The investigators' first interview with Ms. Roe took place on or about October 1, 2015.

98. During that interview—the substance of which was only later revealed to Mr. Doe when he was permitted to review the draft investigative report—Ms. Roe falsely alleged that Mr. Doe held her down on the bed and tried to remove her clothes.

99. Ms. Roe further alleged during the interview, falsely, that Mr. Doe performed oral sex on her without her consent and that she "kneed him in the face" to stop him. She told the

investigation team (again, falsely) that she then got up off the bed, whereupon Mr. Doe pushed her into the door and put his fist up her vagina while she was standing there (something that is simply impossible and, even if possible, could not have been done without serious, verifiable injury).

100. Ms. Roe further alleged during the interview, falsely, that Mr. Doe locked the door from the inside and thus prevented her from leaving (despite the fact that Mr. Doe's dorm room door had a simple push-button lock that is disengaged when the knob is turned).

101. Ms. Roe further alleged during the interview, falsely, that Mr. Doe then threw her on to his bed and took off his pants. Ms. Roe told the investigation team (again, falsely) that she then grabbed Mr. Doe's penis and yanked on it, and then left the room while Mr. Doe pursued her shouting "If you don't want me, that's ok."

102. All of this, according to Ms. Roe, happened in a room inside a packed dormitory, on a Friday night—yet apparently no one heard any screaming or struggling, or saw Mr. Doe in the corridor without his pants.

103. On October 22, 2016—over a month later—the investigative team interviewed Ms. Roe's roommate and friend (at the time), L.J.

104. During the investigative team's interview of L.J., L.J. stated that she saw Ms. Roe later in the evening, in the hours after Ms. Roe left Mr. Doe's room. L.J. described Ms. Roe at that time as "happy" and "giddy." L.J. further told the investigative team that Ms. Roe was showing off hickeys she had received from Mr. Doe and that Ms. Roe told her that Mr. Doe was "good with his tongue."

105. L.J. further told the investigative team that Ms. Roe was "good at making herself seem like a victim" and that she often "bent the truth."

106. On October 23, 2015, the investigative team interviewed W.R., who had given Mr. Doe's telephone number to Ms. Roe. Like L.J., W.R. told the investigative team that she had heard Ms. Roe bragging about hickeys she had received from Mr. Doe.

107. On October 26, 2015, Ms. Orfali, Marymount's Deputy Title IX Coordinator, told Mr. Doe's parents during a face-to-face-meeting that "the Title IX process is increasingly politicized, especially in Virginia."

108. On November 18, 2015, the investigative team interviewed Ms. Roe a second time. During this interview, when asked about her text message to Mr. Doe stating "I'm eating pizza haha," Ms. Roe lied to investigators, stating that she sent this text message *before* the alleged assault. The timestamp on this text message shows it was sent at 8:23 p.m.—nearly an hour and a half after she texted Mr. Doe "here :)" to indicate that she had arrived at his room.

109. On November 24, 2015—some 53 business days after Mr. Doe was notified of Ms. Roe's complaint, and nearly three times the 20-business-day timeframe for completion of an investigation set out in the Policy—the University notified Mr. Doe that a draft investigative report had been completed and invited him to schedule a meeting to review the draft and provide comments to it.

110. Mr. Doe in no way contributed to any delay in the investigation. Mr. Doe submitted all documents, and complied with all requests, within the applicable timeframes set by the University.

111. And nothing in the investigation suggested any "complexity" that would, under the Policy, explain or justify such a substantial delay.

112. Though the University invited Mr. Doe to review the draft investigative report, the University refused to permit Mr. Doe's attorney/advisor to review the report, take notes on the report, or duplicate the report.

113. The following day, November 25, 2015, Mr. Doe's attorney/advisor sent a letter to the University's outside counsel objecting to the University's refusal to allow him to review the report.

114. On December 1, 2015, Mr. Doe reviewed the report without the assistance of his attorney/advisor. Only Mr. Doe was able to take notes (though not verbatim notes).

115. On December 7, 2015, after Mr. Doe's attorney/advisor had complained to the University's outside counsel, the University notified Mr. Doe that he would be permitted a second opportunity to review the report with his attorney/advisor—which they did on December 15. Neither Mr. Doe nor his attorney/advisor, however, was permitted to take verbatim notes of the draft investigative report.

116. On December 22, 2015—within the time period permitted by the Policy—Mr. Doe submitted a response to the draft investigative report.

117. In this response, Mr. Doe objected to a number of statements that the investigative team included in the draft investigative report improperly. These included, among others, the following:

a. When interviewing Mr. Doe, the investigative team asked him whether he knew anyone who had been raped. Mr. Doe responded that he did not, but that he had watched crime shows on television. The investigative team included this question and Mr. Doe's response to it in the summary of Mr. Doe's interview contained in the draft investigative report.

b. The investigative team included, in the summary of Mr. Doe's interview, irrelevant statements describing things Mr. Doe's attorney/advisor did or said during Mr. Doe's interview, including a statement noting that Mr. Doe's attorney/advisor requested that the air conditioner in the room be turned down, and the attorney/advisor's request for a "break to advise [Mr. Doe]."

c. The investigative team included in the summary of Ms. Roe's first interview, Ms. Roe's statement that L.J. had told her that Mr. Doe "sleeps around" to alleviate the pain he feels from his sister's death from leukemia in 2011, when she was 12 years old.

d. The investigative team included in the summary of interviews of three students, Scarlett Hailey, Frederico Burkhart, and Alexandra Veno, comments about Mr. Doe's general drinking habits—habits entirely unrelated to whether he had been drinking on the date of the alleged sexual assault.

e. The investigative team included in the draft investigative report alleged entries in Ms. Roe's journal. Ms. Roe did not provide these journal entries until more than a month after the investigative team requested them, and there was no way to authenticate them or determine whether they had been backdated.

118. The investigative team included each of the above in the draft investigative report—notwithstanding their lack of any relevance to whether Mr. Doe, in fact, sexually assaulted Ms. Roe, or any other relevant issue—simply to prejudice the Adjudicator, or any other person reviewing the report, against Mr. Doe.

119. In addition to objecting to the inclusion of inappropriate statements in the draft investigative report, Mr. Doe objected to the failure of investigators to make an effort to obtain relevant evidence, including each of the following:

a. Any evidence of physical marks showing that Ms. Roe kneed Mr. Doe in the face, as Ms. Roe claimed—no one would have testified to seeing such marks because the kneeing did not occur;

b. Any evidence that Ms. Roe visited a counselor after the alleged assault, as she claimed; and

c. Any evidence that Ms. Roe received numerous calls during the alleged assault, as she claimed.

120. In his response, Mr. Doe requested that the investigative team make an effort to obtain this relevant evidence.

121. On February 2, 2016, the University notified Mr. Doe that a revised draft investigative report had been prepared and invited him to schedule a meeting to review the revised draft and provide comments to it.

122. The next day, on February 3, 2016, Mr. Doe and his attorney/advisor reviewed the revised investigative report. The investigative team had removed none of the improper statements set out above, despite his previous objection to each. Nor had the investigative team made an effort to obtain the relevant evidence set out above, despite his previous requests.

123. On February 10, 2016, Mr. Doe submitted a response to the revised draft investigative report. Mr. Doe reiterated each of his objections to the improper statements set out above. Mr. Doe further reiterated his requests that the investigative team make an effort to obtain the relevant evidence set out above.

124. On March 18, 2016, the University notified Mr. Doe that a second revised draft investigative report had been prepared and invited him to schedule a meeting to review the second revised draft and provide a response to it.

125. On March 23, 2016, Mr. Doe and his attorney/advisor reviewed the second revised investigative report. Only in this second revised report—the third draft of the investigative report overall—did the investigative team remove (1) the comments related to Mr. Doe's attorney/advisor set out above; (2) the inappropriate comment that Mr. Doe "sleeps around" to alleviate the pain he feels from his sister's death; and (3) the inappropriate comments regarding Mr. Doe's general drinking habits.

126. But the second revised investigative report still contained—despite Mr. Doe's multiple objections—(1) the investigative team's question to Mr. Doe as to whether he knew anyone who had been raped and Mr. Doe's response that he did not, but that he had watched crime shows on television; and (2) alleged entries in Ms. Roe's journal, which Ms. Roe did not produce to the investigators for more than a month after being asked for them, which could not be authenticated, and which could have easily been backdated.

127. The second revised investigative report further showed that the investigative team had made no effort to obtain the relevant evidence set out above, despite Mr. Doe's previous requests that the investigative team do so.

128. On March 31, 2016, Mr. Doe provided a response to the second revised investigative report—his third response overall. In it, he reiterated his objections to each of the improper statements set out above. Mr. Doe further reiterated his requests that the investigative team make an effort to obtain the relevant evidence set out above.

129. Seven months after the start of the investigation, on April 13, 2016, the University provided Mr. Doe with an incident report made by C.S., a resident assistant at the University with whom Ms. Roe spoke about her allegations against Mr. Doe.

130. Mr. Doe had been asking, in writing, to see that document for almost four months—in his first (December 22, 2015), second (February 10, 2016), and third (March 31, 2016) responses to the investigative report.

131. Ms. Roe's comments to C.S., as reflected in the incident report, contradicted Ms. Roe's statements to the investigative team in several key details, which Mr. Doe set out in a letter to the investigative team on April 19, 2016.

132. In his letter to investigative team on April 19, 2016, Mr. Doe also objected to the failure of the investigative team to make an effort to obtain any evidence that Mr. Doe, as Ms. Roe alleged, put his entire fist in Ms. Roe's vagina while she was standing—no such injury would have been documented because it did not occur.

133. On April 28, 2016, Mr. Doe and his attorney/advisor reviewed the third revised investigative report.

134. The third revised investigative report still contained—despite Mr. Doe's multiple objections—(1) the investigative team's question to Mr. Doe as to whether he knew anyone who had been raped and Mr. Doe's response that he did not, but that he had watched crime shows on television; and (2) alleged entries in Ms. Roe's journal, which Ms. Roe did not provide the investigative team for more than a month after she was asked for them, which could not be authenticated, and which could have easily been backdated.

135. The third revised investigative report further showed that the investigative team had made no effort to obtain the relevant evidence set out above, despite Mr. Doe's previous requests that the investigative team do so.

136. On May 5, 2016, Mr. Doe provided a response to the third revised investigative report—his fourth and final response overall. In it, he reiterated his objections to each of the improper statements set out above. Mr. Doe further reiterated his requests that the investigative team make an effort to obtain the relevant evidence set out above.

THE ADJUDICATION

137. On May 12, 2016—over eight months after Mr. Doe was notified of Ms. Roe's allegations—Defendant McMurdock provided Mr. Doe with the formal Notice of Charge noting that the investigation had concluded, and that the investigation team had "determined that there is sufficient information alleged to suggest that violations of [the Policy] may have occurred."

138. The Notice of Charge further noted that the University had designated Donald Lavanty, a Professor of Business, Health Care Management, and Legal Studies at the University, to be the Adjudicator.

139. Upon information and belief, Defendant McMurdock made the decision to designate Mr. Lavanty to be the Adjudicator.

140. The investigative team provided Mr. Lavanty with the final investigative report, which included the following inappropriate statements—despite Mr. Doe's repeated objections to their inclusion: (1) the investigative team's question to Mr. Doe as to whether he knew anyone who had been raped and Mr. Doe's response that he did not, but that he had watched crime shows on television; and (2) alleged entries in Ms. Roe's journal, which Ms. Roe did not provide

the investigative team for more than a month after she was asked for them, which could not be authenticated, and which could have easily been backdated.

141. Moreover, the final investigative report provided to Defendant Lavanty did not include the following relevant evidence, or reflect any attempt on the part of the investigative team to obtain such evidence:

a. Any evidence of physical marks showing that Ms. Roe kneed Mr. Doe in the face as Ms. Roe claimed—no one would have testified to seeing such marks because the kneeing did not occur;

b. Any evidence that Ms. Roe visited a counselor after the alleged assault, as she claimed;

c. Any evidence that Ms. Roe received numerous calls during the alleged assault, as she claimed; and

d. Any evidence that Mr. Doe, as Ms. Roe alleged, put his entire fist in Ms. Roe's vagina while she was standing.

142. On June 6, 2016, Mr. Doe sent an email to Defendant McMurdock requesting to meet face-to-face with the Adjudicator**.** In doing so, Mr. Doe noted the Policy's provision stating that, "[i]n reaching a determination of responsibility, the Adjudicator **will** consult with . . . the Respondent . . . as appropriate to ensure a full assessment of the relevant facts." (emphasis added).

143. Defendant McMurdock refused Mr. Doe's request, stating that the "Adjudicator must consult with the parties only if a consultation is needed for a full assessment of the relevant facts. The Adjudicator has not requested a consultation with either you or the Complainant.

Therefore, I presume the Adjudicator is able to fully assess the relevant facts in the investigation report without the need to consult with the parties."

144. Upon information and belief, Defendant McMurdock influenced Mr. Lavanty's decision not to meet face-to-face with an accused student under the Policy.

THE DECISION AND SANCTION

145. On June 22, 2016, the Adjudicator issued a decision without ever meeting with Mr. Doe.

146. In his June 22, 2016, letter, the Adjudicator explained that, in reaching his decision that Mr. Doe was responsible, he considered *only* Ms. Roe's and Mr. Doe's accounts of what allegedly occurred in Mr. Doe's room on the evening of November 8, 2014. The Adjudicator did not consider *any* other evidence—however relevant to the veracity of Ms. Roe's allegations.

147. For example, the Adjudicator refused to consider text messages sent by Ms. Roe to Mr. Doe in the hours following the alleged assault—messages that show that Ms. Roe's demeanor towards Mr. Doe was not consistent with how a victim of a violent sexual assault would communicate with her attacker in the hours after a sexual assault.

148. The Adjudicator also refused to consider statements that Ms. Roe made to her roommate, L.J., in the hours following the assault Mr. Doe in the hours following the alleged assault, and L.J.'s description of Ms. Roe's demeanor as "happy" and "giddy"—all of which show that Ms. Roe's demeanor was not consistent with that of a victim of a violent sexual assault just hours after the alleged assault.

149. The Adjudicator did not explain why he would not consider this evidence, stating only that "[i]n making this finding, all parties should be assured that great effort was placed upon

considering only that information which dealt directly with the violation. To that end, therefore, within the confines of the actual event, I find the Complainant's consistent, timely and immediate recanting [*sic*] of the details, weighed heavily in support of the complainant's believable statement that the violation did occur."

150. The Adjudicator did not explain how and when—in his view—Ms. Roe made a "consistent, timely and immediate recanting [*sic*] of the details" of the alleged assault.

151. To the contrary, Ms. Roe's statements were not consistent, timely, or immediate: several material inconsistencies existed between what she told a resident assistant, C.S., and what she told the investigative team; she lied to the investigative team about the fact that she had sent a text message to Mr. Doe shortly after the alleged assault saying "I'm eating pizza haha"; and she only made her complaint *ten months after* the alleged assault took place. In no way can Ms. Roe's statements to Marymount be reasonably described as "consistent, timely, and immediate."

152. In the decision, the Adjudicator noted that he had "concluded that there was a preponderance of evidence to find the Respondent, [Mr. Doe], responsible for violation of [the Policy], Section V-E (Non-Consensual Sexual Intercourse). Specifically, the Respondent is found responsible for having or attempting to have sexual intercourse with the Complainant without effective consent. Sexual Intercourse includes vaginal or anal penetration, however slight, with a body part (e.g. penis, tongue, finger, hand) or object, or oral penetration including mouth to genital contact." Apart from this parroting of the Policy, the Adjudicator provided no explanation for the factual basis of his decision.

153. The Adjudicator's letter invited both Mr. Doe and Ms. Roe to submit written impact statements no later than June 27, 2016.

154. Mr. Doe timely submitted his written impact statement on June 27, 2016.

155. On June 30, 2016, Defendant McMurdock emailed Mr. Doe and stated, "Due to extenuating circumstances, the Complainant, [Jane Roe], was provided additional time to submit a written impact statement. If you would like to send an updated written impact statement for the Adjudicator to review, please do so no later by 5pm on Friday, July 1, 2016."

156. Mr. Doe did not submit an updated written impact statement.

157. Upon information and belief, Ms. Roe submitted her written impact statement on or about June 30, 2016.

158. Mr. Doe was never shown a copy of that impact statement.

159. Upon information and belief, Ms. Roe alleged in her written impact statement that Mr. Doe had sexually assaulted her on or about November 8, 2014.

160. On July 11, 2016, the Adjudicator rendered his sanction decision, suspending Mr. Doe for two academic years, through the summer semester of 2018, and banning him from campus in the meantime.

MR. DOE'S APPEAL

161. On July 18, 2016, Mr. Doe timely appealed the Adjudicator's decision as permitted under the Policy.

162. In his appeal, Mr. Doe presented three arguments. First, Mr. Doe argued that the Adjudicator failed to conduct a thorough, impartial, and fair review of the evidence—given his refusal to consider any evidence except for Mr. Doe's and Ms. Roe's statements as to what happened in Mr. Doe's room. In advancing this argument, Mr. Doe noted that the Adjudicator had stated that he considered only "information which dealt directly with the violation"—*i.e.*, Ms. Roe's and Mr. Doe's accounts of what occurred in Mr. Doe's room.

163. Second, Mr. Doe argued that the Adjudicator failed to consult with him as required under the Policy.

164. Third, Mr. Doe argued that the final investigative report provided to the Adjudicator contained information that "was irrelevant, more prejudicial than probative, or immaterial." In advancing this argument, Mr. Doe pointed to the improper statements set out above, which he had objected to in each of his four responses to the draft investigative report.

165. On or about July 21, 2016, Ms. Roe submitted a response to Mr. Doe's appeal.

166. Upon information and belief, Ms. Roe alleged in her response to Mr. Doe's appeal that Mr. Doe had sexually assaulted her on or about November 8, 2014.

167. In a decision rendered on August 8, 2016, the Appellate Authority, Joseph D.W. Foster, denied Mr. Doe's appeal and upheld the sanction of a two-year suspension.

168. In the decision denying Mr. Doe's appeal, Mr. Foster gave short shrift to Mr. Doe's first and third arguments, finding that these arguments could be "dispatched of easily in that neither agreement [*sic*] provides any new evidence unavailable during the time of investigation and nor provides information that would construe a material deviation from written procedure that resulted in an unfair outcome."

169. In rejecting Mr. Doe's second argument—that the Adjudicator's failure to meet with Mr. Doe to discuss the case violated the Policy—Mr. Foster adopted the same rationale given by Defendant McMurdock when she refused Mr. Doe's request to meet with the Adjudicator: that such a meeting is optional.

170. Upon information and belief, Defendant McMurdock influenced Mr. Foster's decision that an adjudicator need not meet face-to-face with an accused student under the Policy.

171. Mr. Foster's August 8, 2016, decision rendered the finding against Mr. Doe final—some 335 days after Mr. Doe was notified of Ms. Roe's complaint, and more than five times the 60-day timeframe for resolution of a complaint set out in the Policy and considered typical by OCR.

172. Mr. Doe in no way contributed to any delay in the University's resolution of Ms. Roe's complaint. Mr. Doe submitted all documents, and complied with all requests, within the applicable timeframes set by the University.

173. And nothing in the investigation, adjudication, or appellate review of Mr. Doe's case suggested any "complexity" that would, under the Policy, explain or justify such a substantial delay.

MARYMOUNT DENIES MR. DOE ACCESS TO RECORDS CONCERNING INVESTIGATION AND ADJUDICATION

174. On September 8, 2016, following the issuance of the final decision, Mr. Doe sent an email to Defendant McMurdock requesting a copy of the final investigative report that was prepared by the investigative team and provided to the Adjudicator in his case.

175. As Mr. Doe explained in his email to Defendant McMurdock, FERPA requires Marymount to give its students access to their educational records.

176. On September 27, 2016, Defendant McMurdock finally responded to Mr. Doe's email. She refused to provide the final investigative report, despite the fact that it is unquestionably part of Mr. Doe's educational record.

177. Defendant McMurdock explained that she was refusing to provide the final investigative report because Mr. Doe did not have "written consent from the affected students."

178. Given that there was only one complainant, Defendant McMurdock's use of the plural word "students" presumably meant that Mr. Doe was required to obtain written consent from every single student named in the investigative report.

179. Defendant McMurdock knew that Mr. Doe was back in the United Kingdom and that this would be effectively impossible for him to do.

180. Defendant McMurdock also knew that Mr. Doe had been forbidden, throughout the process, from contacting any potential witnesses in the case—the very students from whom he would need to seek "written consent."

181. Defendant McMurdock went on to assert that the University could not even provide Mr. Doe a *redacted* copy of the final investigative report because the report "cannot be redacted to eliminate the irreducible presence of personal characteristics or other information that would reveal the identities of the affected students"—students whose identities Mr. Doe obviously already knows, as Defendant McMurdock knew.

182. In other words, Defendant McMurdock denied Mr. Doe's request by maintaining that FERPA, which requires that a student be provided access to his educational records, prohibits a school from giving an accused student access to the investigative report in a misconduct proceeding *against him*—simply because other students (including, of course, the complainant) are named in the report.

183. Defendant McMurdock's purported reasoning is supported by neither the statutory language of FERPA nor by the regulations and administrative guidance interpreting it. Rather, Defendant McMurdock's purported reasoning was a mere pretext to hinder Mr. Doe's efforts to obtain legal redress of the University's arbitrary, capricious, malicious, and discriminatory investigation and adjudication.

OTHER EVIDENCE OF A PATTERN OF DISCRIMINATION BY MARYMOUNT IN RESPONSE TO CALLS FOR A MORE AGGRESSIVE APPROACH TO ALLEGATIONS OF SEXUAL MISCONDUCT

184. For several years, Marymount University has been under significant pressure—from OCR, its student body, and the public-at-large—to vigorously punish male students accused of sexual assault by female students.

185. Upon information and belief, Marymount has, over the past several years, modified its sexual misconduct policies and procedures to secure more findings of responsibility of male students accused of sexual misconduct.

186. In a sexual misconduct case against a male student brought by the University subsequent to the adjudication of Mr. Doe's case, the University appointed Donald Lavanty, who served as the Adjudicator in Mr. Doe's case, as one of the two investigators in the case.

187. During this subsequent case, the accused male student claimed that the female complainant had, in fact, repeatedly touched his genitals without his consent and repeatedly pushed his hand into her genitals without his consent.

188. During his interview with Mr. Lavanty, the accused male student plainly stated that he did not consent to these actions by the complainant. In response, Mr. Lavanty asked the accused male student, "Were you aroused?"

189. When the accused male student responded that he was not aroused, Mr. Lavanty asked, "Not at all?"

190. Mr. Lavanty would not have asked a female student, in an investigative interview of a complaint of sexual misconduct, whether she was aroused by a sex act that she was asserting that she did not consent to.

191. Indeed, upon information and belief, Mr. Lavanty and other University investigators and adjudicators are trained that victims of sexual assault may experience physiological arousal during a sexual assault, and that a person's being physiologically aroused should not affect an investigator's or adjudicator's conclusions as to whether the person consented to sexual activity.

192. Mr. Lavanty's questions were based, at least in part, on his biased assumption that males are more likely than females to be perpetrators of sexual misconduct, and less likely than females to be victims of sexual misconduct.

193. The other investigator appointed in that subsequent case was Olabisi Okubadejo, who had previously served for six years (2007 to 2013) as a Supervisory General Attorney in the U.S. Department of Education's Office for Civil Rights ("OCR")—the agency that is tasked with enforcing federal civil rights laws that prohibit discrimination in educational institutions including Title IX.

194. During the six years that Ms. Okubadejo served as an attorney at OCR (2007 to 2013), OCR imposed a dramatically new sexual misconduct investigatory regime upon colleges and universities that severely limited the rights of accused students. Among other things, OCR's April 4, 2011, "Dear Colleague" letter required schools to use a "preponderance of the evidence" standard of proof—the lowest such standard known to the American judicial system—making it easier for innocent students to be found responsible for serious charges based often on the flimsiest of evidence.

195. Moreover, the University allowed Ms. Okubadejo to serve as an investigator despite knowing that she had said, during a May 12, 2014, interview, "I think the statistics also show that most people who complain about sexual assault are telling the truth. And so if most

people who complain about sexual assault on campus are telling the truth and if these cases aren't being handled or aren't being handled appropriately through the criminal system or aren't being taken to conviction through the criminal system then what is happening to these people who are complaining about sexual assault on campus?"

196. Upon information and belief, University investigators and adjudicators are trained that less than 2% of reports of sexual assault are false. Thus, by converse, University investigators and adjudicators are trained to believe that there is a 98% chance that a student complaining that she was sexually assaulted is telling the truth and a 98% chance that the accused student is guilty.

197. Upon information and belief, University investigators and adjudicators are trained that victims of sexual assault may display a flat affect at the hearing, and that this should not cause an investigator or adjudicator to doubt that the complainant was, in fact, sexually assaulted.

198. Upon information and belief, University investigators and adjudicators are trained that victims of sexual assault may experience physiological arousal during a sexual assault, and that the complainant's being physiologically aroused should not affect an investigator's or adjudicator's conclusions as to whether the complainant consented to sexual activity.

199. Training materials provided to the University's investigators and adjudicators are not made available to accused students generally, nor have they been available to Mr. Doe specifically.

200. Upon information and belief, these and other aspects of Marymount's training of its investigators and adjudicators are intended to secure more findings of responsibility of male students accused of sexual misconduct.

CAUSES OF ACTION

COUNT I – VIOLATION OF TITLE IX (20 U.S.C. § 1681)
(*Against Defendant Marymount University)*

201. Mr. Doe incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

202. Marymount receives federal funding, including in the form of federal student loans given to students.

203. Because it receives federal funding, Marymount is subject to the requirements of Title IX.

204. Title IX prohibits gender discrimination in the educational setting.

205. The egregious and deliberate procedural shortcomings in Marymount's investigation and adjudication of Ms. Roe's allegations against Mr. Doe, as well as the sheer implausibility of the sexual assault allegations against Mr. Doe, cast serious doubt on its finding of responsibility.

206. The egregious and deliberate procedural shortcomings in the investigation and adjudication, the extraordinary and outrageous circumstances surrounding the investigation and adjudication of Ms. Roe's allegations against Mr. Doe, Marymount's employment of a biased investigator in a subsequent sexual misconduct proceeding against another male student, Mr. Lavanty's comments in a subsequent sexual misconduct proceeding against another male student showing a gender bias, and a Policy provision giving complainants a second bite at the apple denied to respondents, all show that Mr. Doe's gender motivated Marymount's erroneous decision to find Mr. Doe responsible and suspend him.

207. The egregious and deliberate procedural shortcomings in Marymount's handling of Ms. Roe's allegations against Mr. Doe include:

- The inclusion in the final investigative report—over Mr. Doe's repeated objections—irrelevant, inadmissible, and highly prejudicial statements, particularly: (1) the investigative team's question to Mr. Doe as to whether he knew anyone who had been raped and Mr. Doe's response that he did not, but that he had watched crime shows on television; and (2) alleged entries in Ms. Roe's journal, which Ms. Roe did not provide the investigative team until more than a month after she first offered to provide them, which could not be authenticated, and which could have easily been backdated.

- The Adjudicator's (Mr. Lavanty's) failure to meet with Mr. Doe—face to face—to allow him to plead his case before making his decision, despite the fact that the decision turned on credibility and despite the fact that Marymount's sexual misconduct policy specifically requires the adjudicator to meet with the accused student before rendering a decision.

- The Adjudicator's (Mr. Lavanty's) unexplained refusal to consider evidence that would have supported Mr. Doe's claims and refuted Ms. Roe's, like that fact that Ms. Roe sent friendly text messages to Mr. Doe shortly after he allegedly assaulted her.

- The investigative team's refusal to make any effort—despite Mr. Doe's repeated requests that they do so—to obtain evidence that would refute allegations made by Ms. Roe, including witnesses that could state that Mr. Doe had no marks on his face (which is inconsistent with Ms. Roe's claim that she kneed John in the face), or any evidence of physical injury that would refute Ms. Roe's already implausible claim that Mr. Doe put his entire fist in her vagina while she was standing.

- Marymount's refusal to provide an exception to the no-contact order permitting Mr. Doe to discuss Ms. Roe's allegations with other Marymount students who were witnesses or potential witnesses, hampering his ability to prepare his own defense.

- Marymount's investigation dragged on for some 53 business days after Mr. Doe was notified of Ms. Roe's complaint, nearly three times the 20-business-day timeframe for completion of an investigation set out in the Policy. And it took Marymount some 335 days to finally resolve the complaint against Mr. Doe, more than five times the 60-day timeframe for resolution of a complaint set out in the Policy and considered typical by OCR.

- Marymount's refusal to provide Mr. Doe access to the final investigative report despite the requirements, under FERPA, that it do so.

208. These egregious and deliberate procedural shortcomings prevented Mr. Doe from fully defending himself—as Defendants intended them to.

209. Marymount's actions make clear that the decision to find Mr. Doe responsible and suspend him was motivated by gender. Such actions include:

- The egregious and deliberate procedural shortcomings employed in the investigation and adjudication of the allegations against Mr. Doe, as set out above, including a number of violations of the Policy;

- The implausibility of Ms. Roe's allegations of which Mr. Doe was found responsible;

- The decision to employ biased investigators (Mr. Lavanty and Ms. Okubadejo) in a subsequent sexual misconduct proceeding against another male student, and the refusal to replace those investigators when the bias was identified;

- The Policy's provision—made with the intention of favoring female students—allowing a complainant whose allegations the investigative team determines lack merit a second bite at the apple, a *de novo* review by the University's Title IX team, while denying a respondent the same opportunity if the investigative team reaches the opposite conclusion.

210. Moreover, Marymount initiated its investigation and adjudication of the allegations against Mr. Doe in the shadow of (1) OCR investigations—of now more than 300 colleges and universities nationwide—into how colleges and universities handle allegations of sexual assault; and (2) innumerable reports covered in the national media that suggest the pervasive nature of sexual assault committed by male students on college campuses throughout the nation. As a reaction to the scrutiny of these OCR investigations and these national stories, and in order to be perceived as aggressively addressing the perceptions that sexual assault against female students is rampant on college campuses, Marymount has treated male students accused of sexual misconduct by female students more aggressively than it otherwise would, and more aggressively than it would treat similar complaints made by male students.

211. Marymount has engaged in a pattern of unfair investigations and adjudications resulting in serious sanctions being imposed on male students. Upon information and belief,

Marymount has not made comparable efforts with respect to allegations of sexual misconduct made against female students.

212. Accordingly, Defendant Marymount University is liable to Mr. Doe for violations of Title IX and for all damages arising out of that violation.

COUNT II – BREACH OF CONTRACT
(*Against Defendant Marymount University*)

213. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

214. Mr. Doe paid the University sums of money for his education, and in return, the University contracted to provide Mr. Doe with access to its undergraduate degree program.

215. Mr. Doe's enrollment in, and attendance of, classes at Marymount created in Mr. Doe an expectation that he will be allowed to continue in his course of study until he earns his degree from the University, provided that he maintains satisfactory grades and complies with University rules and policies.

216. Accordingly, an implied contractual relationship between Mr. Doe and the University exists, under which each party owes the other certain duties.

217. Under the implied contract between Mr. Doe and Marymount, Marymount has a duty not to suspend Mr. Doe for disciplinary misconduct arbitrarily, capriciously, maliciously, discriminatorily, or otherwise in bad faith.

218. The University breached these contractual obligations by suspending Mr. Doe for sexual misconduct through an investigative and adjudicative process that—in the ways, and for the reasons, set out above—was arbitrary, capricious, malicious, discriminatory, and conducted in bad faith.

219. As a direct and proximate result of this breach, an erroneous finding that Mr. Doe committed sexual assault has been made a part of Mr. Doe's educational records, which may be released to educational institutions and employers to which Mr. Doe applies, substantially limiting his ability to gain acceptance at other institutions or secure future employment.

220. Accordingly, Marymount is liable to Mr. Doe for breach of contract and for all damages arising therefrom.

COUNT III – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(*Against Defendant Marymount University*)

221. Mr. Doe incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

222. Every contract contains within it an implied covenant of good faith and fair dealing.

223. Marymount breached that covenant by suspending Mr. Doe for sexual misconduct through an investigatory and adjudicative process that—in the ways, and for the reasons, set out above—was arbitrary, capricious, malicious, discriminatory, and conducted in bad faith.

224. As a direct and proximate result of this breach, an erroneous finding that Mr. Doe committed sexual assault has been made a part of Mr. Doe's educational records, which may be released to educational institutions and employers to which Mr. Doe applies, substantially limiting his ability to gain acceptance at other institutions or secure future employment.

225. Accordingly, Defendant Marymount University is liable to Mr. Doe for breach of the covenant of good faith and fair dealing and for all damages arising therefrom.

COUNT IV – NEGLIGENCE
(*Against Defendants Marymount University and Linda McMurdock*)

226. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

227. In conducting its investigation and adjudication of Ms. Roe's allegations against Mr. Doe, Marymount owed a common law duty to Mr. Doe to exercise reasonable care, with due regard for the truth, an evenhanded application of procedure, and the important and irreversible consequences of its actions.

228. Through the acts set forth above, acting through its agents, servants and/or employees, Marymount breached that duty by carelessly, improperly, and negligently performing its assigned duties, and facilitating an investigatory and adjudicative process that—in the ways, and for the reasons, set out above—was arbitrary, capricious, malicious, discriminatory, and conducted in bad faith.

229. As Marymount's Title IX Coordinator, Defendant McMurdock is, or at all relevant times was, responsible for overseeing Marymount's process for investigating and adjudicating allegations of sexual misconduct, including advising members of the investigative team, adjudicator, and appeals officers with regards to their authority and responsibilities under the Policy, Title IX, and applicable Title IX regulations and guidance. Accordingly, Defendant McMurdock owed a common law duty to Mr. Doe to exercise her responsibilities with reasonable care, with due regard for the truth, an evenhanded application of procedure, and the important and irreversible consequences of her actions.

230. Through the acts set forth above, Defendant McMurdock breached that duty by carelessly, improperly, and negligently performing her assigned duties, and facilitating an

investigatory and adjudicative process that—in the ways, and for the reasons, set out above—was arbitrary, capricious, malicious, discriminatory, and conducted in bad faith.

231. As a direct and proximate result of Defendants' negligence, carelessness, and gross breach of due care, Mr. Doe has endured extreme emotional and psychological suffering; his academic records will reflect the erroneous finding that he committed sexual assault; he will be handicapped in gaining acceptance to other educational institutions; and he will be handicapped in securing employment.

232. Accordingly, all Defendants are liable to Mr. Doe for negligence and for all damages arising out of that violation.

COUNT V – BREACH OF DUTIES OWED UNDER THE LAW OF ASSOCIATIONS
(*Against Defendant Marymount University*)

233. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

234. In conducting its investigation and adjudication of Ms. Roe's complaint against Mr. Doe, Marymount owed Mr. Doe a common law duty under the law of associations not to suspend him for sexual misconduct on a record that was devoid of evidence to support the charge.

235. Acting through its agents, servants and/or employees, Marymount breached this duty by finding Mr. Doe responsible for sexual assault based on allegations by Ms. Roe that are, on their face, implausible—particularly Ms. Roe's allegation that Mr. Doe put his entire fist in her vagina while she was standing (something that is simply impossible and, even if possible, could not have been done without serious, verifiable injury).

236. In conducting its investigation and adjudication of Ms. Roe's complaint against Mr. Doe, Marymount owed Mr. Doe a common law duty under the law of associations not to

suspend him through an investigatory and adjudicative process that is arbitrary, capricious, malicious, discriminatory, or conducted in bad faith.

237. Acting through its agents, servants and/or employees, Marymount breached this duty by finding Mr. Doe responsible for sexual assault through an investigatory and adjudicative process that—in the ways, and for the reasons, set out above—was arbitrary, capricious, malicious, discriminatory, and conducted in bad faith.

238. In conducting its investigation and adjudication of Ms. Roe's complaint against Mr. Doe, Marymount owed Mr. Doe a common law duty under the law of associations to follow its policies and procedures—including the Policy.

239. Acting through its agents, servants and/or employees, Marymount breached this duty by failing to follow the Policy in several material respects, including the following:

a. The adjudicator refused to meet with Mr. Doe to allow him to plead his case before making his decision, despite the provision of the Policy stating that "In reaching a determination of responsibility, the Adjudicator **will** consult with . . . the Respondent . . . as appropriate to ensure a full assessment of the relevant facts" (emphasis added).

b. The investigative team's refusal to even make an effort to obtain certain relevant evidence, as set out above, despite Mr. Doe's numerous requests that they do so, and despite the provision in the Policy requiring the "investigative team [to] gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate."

c. The investigative team's refusal to exclude inappropriate statements from the final investigative report provided to the Adjudicator, particularly (1) the investigative team's question to Mr. Doe as to whether he knew anyone who had been raped and Mr. Doe's response that he did not, but that he had watched crime shows on television; and (2) alleged entries in Ms. Roe's journal, which Ms. Roe did not provide the investigative team until more than a month after she first offered to provide them, which could not be authenticated, and which could have easily been backdated. These statements were included in the final investigative report despite Mr. Doe's repeated objections to their inclusion and despite the Policy's requirement that the investigative team "review all facts gathered to determine whether the information is relevant and material" and "redact information that is irrelevant, more prejudicial than probative, or immaterial."

d. Marymount's investigation dragged on for some 53 business days after Mr. Doe was notified of Ms. Roe's complaint, nearly three times the 20-business-day timeframe for completion of an investigation set out in the Policy. And it took Marymount some 335 days to finally resolve the complaint against Mr. Doe, more than five times the 60-day timeframe for resolution of a complaint set out in the Policy and considered typical by OCR.

240. As a direct and proximate result of Marymount's breach of these duties, Mr. Doe has endured extreme emotional and psychological suffering; his academic records will reflect the erroneous finding that he committed sexual assault; he will be handicapped in gaining acceptance to other educational institutions; and he will be handicapped in securing employment.

241. Accordingly, Defendant Marymount University is liable to Mr. Doe for violations of duties owed under the law of associations, and for all damages arising out of such violations.

COUNT VI—DEFAMATION *PER SE*
(*Against Defendant Jane Roe*)

242. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

243. When Ms. Roe returned to her dormitory on November 8, 2014, she was initially "happy" and "giddy," according to her roommate L.J., who was later interviewed by the investigators. She showed off the hickeys that Mr. Doe had given her and said that Mr. Doe was "good with his tongue."

244. Ms. Roe had told previously L.J., shortly before meeting Mr. Doe that night, that she wanted to "climb [Mr. Doe] like a fucking tree" and wanted him to "throw [her] against a wall."

245. When no one paid much attention to what Ms. Roe was saying upon her return from Mr. Doe's room and as she started to drink more, her mood began to change.

246. Ms. Roe told her roommate, L.J., that Mr. Doe had been "aggressive" with her and that she "didn't ask for it," referring to sexual contact with Mr. Doe.

247. On or about that same night, Ms. Roe told another Marymount student, Z.M., that Mr. Doe had physically and sexually assaulted her.

248. Approximately ten months after Ms. Roe made these defamatory statements, on September 8, 2015, Defendant McMurdock notified Mr. Doe that Ms. Roe had alleged that Mr. Doe sexually assaulted her, and that Marymount would be conducting a Title IX investigation of such allegations.

249. On the same date, September 8, 2015, Defendant McMurdock sent Mr. Doe a letter notifying him that the University was imposing a "No-Contact Order as an Interim Measure . . . between [Mr. Doe] and [Ms.] Roe."

250. In addition to prohibiting Mr. Doe from "mak[ing] [any] contact, direct or indirect with [Ms. Roe]," the No-Contact Order prohibited Mr. Doe from engaging in any "discussion of th[e] order or the alleged acts that lead to its issuance with other Marymount University students or employees with the exception of support persons identified as Confidential Resources per the University Sexual Harassment and Interpersonal Misconduct Policy."

251. The No-Contact Order did not provide an exception allowing Mr. Doe—even indirectly through an advisor or attorney—to contact University students who might have information about the events surrounding Ms. Roe's allegations for the purpose of pursuing a defamation claim against Ms. Roe.

252. Mr. Doe was therefore prohibited by the No-Contact Order from contacting—even indirectly through an advisor or attorney—other University students who might have information necessary or helpful to pursing a defamation claim against Ms. Roe.

253. The No-Contact Order remained in effect throughout the University's investigation and adjudication of Ms. Roe's allegations against Mr. Doe, which did not become final until resolution of Mr. Doe's appeal on August 8, 2016.

254. Moreover, the Policy prohibits a student from engaging in "retaliation" against another student who makes a complaint of sexual assault with the University. The Policy defines retaliation broadly and vaguely as "any act or attempt to retaliate against or seek retribution from any individual . . . involved in the investigation and/or a resolution of a report under this policy." Consequently, Mr. Doe reasonably feared that by pursuing any defamation claim against Ms. Roe—while the University's investigation and adjudication was ongoing—he would face additional disciplinary charges under the "retaliation" provisions of the Policy.

255. On or about October 1, 2015, Ms. Roe met with the investigators and told them that Mr. Doe had sexually assaulted her on or about November 8, 2014.

256. On June 30, 2016, Defendant McMurdock emailed Mr. Doe and stated, “Due to extenuating circumstances, the Complainant, [Jane Roe], was provided additional time to submit a written impact statement. If you would like to send an updated written impact statement for the Adjudicator to review, please do so no later by 5pm on Friday, July 1, 2016.”

257. Upon information and belief, Ms. Roe submitted that impact statement on or about June 30, 2016.

258. Mr. Doe was never shown a copy of that impact statement.

259. Upon information and belief, Ms. Roe alleged in the impact statement that Mr. Doe had sexually assaulted her on or about November 8, 2014.

260. On July 18, 2016, Mr. Doe timely filed a timely appeal of the Adjudicator’s decision.

261. On or about July 21, 2016, Ms. Roe submitted a response to Mr. Doe’s appeal to the Appellate Authority.

262. Upon information and belief, Ms. Roe alleged in her response to Mr. Doe’s appeal that Mr. Doe had sexually assaulted her on or about November 8, 2014.

263. Upon information and belief, Ms. Roe made defamatory statements in addition to those noted in this Complaint, again alleging that Mr. Doe sexually assaulted her on or about November 8, 2014, and she intended for those statements to damage Mr. Doe’s professional and personal reputation.

264. The statements noted in this Complaint and other statements made by Ms. Roe imputed to Mr. Doe the commission of a physical and sexual assault, which are crimes involving

moral turpitude. If these statements by Ms. Roe were true (and they are not), Mr. Doe could be criminally indicted and punished for the acts described. Ms. Roe's statements, therefore, constitute defamation *per se*.

265. Ms. Roe made her defamatory statements with actual malice and reckless disregard of their falsity, or with knowledge of their falsity.

266. No privileges attach to Ms. Roe's defamatory statements.

267. As a direct and proximate result of Ms. Roe's defamatory statements, Mr. Doe has endured extreme emotional and psychological suffering; his academic records will reflect the erroneous finding that he committed sexual assault; he will be handicapped in gaining acceptance to other educational institutions; he will be handicapped in securing employment; his character and reputation at Marymount and in the community at large was impaired; and he suffered and will continue to suffer mental anguish, personal humiliation, and a loss of reputation.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that this Court enter judgment on behalf of Plaintiff and against Defendants, and order relief against the Defendants as follows:

a. That this Court issue preliminary and permanent injunctive relief restraining Defendants (1) from continuing to enforce any punishment against Plaintiff, and (2) from making any notation on Plaintiff's transcript, or keeping any record related to the disciplinary finding in Plaintiff's educational records, as its sanctions were the product of an erroneous finding that Plaintiff violated the Policy, which was itself the product of a flawed disciplinary process;

b. That Defendants be ordered to pay compensatory damages as appropriate to compensate Plaintiff for his losses caused by the University's misconduct; and

c. That Defendants be ordered to pay punitive damages; and

d. That this Court award Plaintiff his costs and expenses incurred in this action, including attorneys' fees, as well as such other and further relief as the Court deems just and proper.

Dated: March 31, 2017

Respectfully submitted,

_/s/________________________________

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